IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948.

No. 157

EDWARD M. WINSTON,
Petitioner,

vs.

COUNTY OF COOK, a Municipal Corporation of the State of Illinois, and WILLIAM J. TUOHY, Successor State's Attorney,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of the State of Illinois.

There heard on appeal from the Circuit Court of Cook County.

REPLY BY PETITIONER WINSTON TO ANSWER BY STATE'S ATTORNEY TO PETITION FOR WRIT OF CERTIORARI.

WEIGHTSTILL WOODS,
Attorney for Petitioner.
141 West Jackson Boulevard
Chicago 4, Illinois

HORACE RUSSELL,
LAWRENCE C. MILLS,
RICHARD H. WOODS,
Of Counsel.

U.S. LAW PRINTING CO., PHONE LAKEVIEW 6881, CHICAGO, ILLINOIS

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REPLY BY PETITIONER WINSTON

Respondents Principal Citation Sustains Petition by Winston

Respondent State's Attorney at page 9 of answer, quotes from the case of *Brinkerhoff-Faris Trust and Savings Company* v. *Hill, the County Treasurer,* 281 U. S. 673. But the actual decision in that case, reversed the ruling by the

Supreme Court of Missouri, for the reason that the procedures there demanded by the state courts, had denied to that petitioner, due process of law under the fourteenth amendment. Compare that case with our record (tr. 35-48).

The denial of hearing in this case to Winston as shown by his Petition to this court, is equivalent to the denial of hearing in that Brinkerhoff-Faris case. The effective denial in each case, was accomplished by sham procedure and a fog of protestation. The fact is that in each case the state courts applied the ancient shell game procedure. The litigant must guess under which of three or several shells the successful procedure is to be found, and it is not under any of them no matter what selection is made by the litigant. Your honors have said so in the Marino and other criminal cases (332 U. S. 561). You have reversed because confusion of procedure was used by the state courts to mystify and defeat the litigant by manipulation.

That Brinkerhoff-Faris case is good precedent and clear reason for this court to grant the Writ of Certiorari to Winston, and to reverse the action by the Illinois courts in this record. That decision is in line with the citations made at pages 6 and 7 and 51 of our Petition.

What The Answer Says

The Answer says that an act of *Legislation* ex post facto by a state, is reviewable by this court; but the State's Attorney insists that all action by state *Court* and by him as *Executive,* is beyond review here under the Constitution of the United States. The language he quotes at page 9 was mere dictum, without any control over the actual decision

in that Brinkerhoff-Faris case. The State's Attorney mentions these additional cases:

Bristow Battery Company v. *Board of Commissioners of Rogers County Oklahoma;* 37 F 2d 504; which was a bill to enjoin suit on bonds.

Central Land Co. v. *Laidley* 159 U. S. 103; (where Justice Field dissented)

Patterson v. *Colorado* 205 U. S. 454; (where two justices dissented)

Bacon v. *Texas;* 163 U. S. 207 which was decided more from fifty years ago.
1896.

O'Neill v. *Northern Colorado Irrigation Company* 242 U. S. 20.

Winston challenges those cases as now overruled and abandoned. We now mention the later cases.

Recent Decisions by This Court.

In *Erie Railroad* v. *Tompkins* 304 U. S. 64 (mentioned at page 9 of the Answer by State's Attorney) this Court overruled *Swift* v. *Tyson* and a century of practice and decisions, and ruled that state court decisions are within your *power to review,* just the same as state legislation. By the recent real estate restrictive covenant cases, *Shelley v. Kraemer* 334 U. S. 836 at 842 ff, your Honors repeated and extended that ruling in favor of general jurisdiction vested in this court by the Constitution. Even the rules and resolutions of state school boards may be stricken down by this court as wrongful state action and discrimination. *West Virginia State Board of Education et al* v. *Barnette et al*: 319 U. S. 624 at 637 ff, 63 Sct. 1178 at 1185.

When reversing Texas Courts your Honors have said:

"Equal protection of the laws is something more than an abstract right. It is a command which the state must respect, the benefits of which every person may demand. Not the least merit of our constitutional system it that its safeguards extend to all—the least deserving as well as the most virtuous."

Hill v. *Texas* 316 U. S. 400 at 406 62 Sct. 1159 at 1162.

"Congress does not abdicate its functions when it describes what job must be done, who must do it, and what is the scope of his authority. In our complex economy that indeed is frequently the only way in which the legislative process can go forward. Whether a particular grant of authority to an officer or agency is wise or unwise, raises questions which are none of our concern. Our inquiry ends with the constitutional issue."

Bowles v. *Willingham* 321 U. S. 503 at 515 64 S ct. 641 at 647.

Where after services to the public have been rendered, the Congress as a legislative body forbade payment for those services because they disapproved the persons who performed them, and the congress defied the executive authority, this court has ruled that such conduct by the legislative body was void under the constitution, because it is ex post facto and like a bill of attainder.

United States v. *Lovett,* 328 US 303 at 314 ff.

Since the legislature may not defy the executive which has acted by authority, so in the case at bar, the State's Attorney and the Illinois Courts have no power under the Constitution to defy the legislative body, the Board of County Commissioners of Cook County. This court has ruled that legislative bodies are as much the guardians of the rights and liberties of the people, as the courts ever are. The legislative body may act directly or may entrust an agent or employee with power to act.

Perkins v. *Lukens Steel Company,* 310 US 113 at 129 ff. 60 S. Ct. 869 at 878.

Winston is Defending Against Information in Equity

By pleading and brief the State's Attorney as an executive asserts that he has power to refuse payment to a citizen after the legal services are performed under an employment made by a legislative body under direct provision of the Constitution of Illinois. If that be not arrogant despotism, we do not know how to state it nor where it may be found. The Answer is a flippant denial of republican form of government, to which all citizens are entitled by the Constitution.

> "The 'due process of law' which the Fourteenth Amendment exacts from the States is a conception of fundamental justice. (citing cases). It is not satisfied by merely formal procedural correctness, nor is it confined by any absolute rule such as that which the Sixth Amendment contains in securing to the accused 'the assistance of counsel for his defense'. By virtue of that provision, counsel must be furnished to an indigent defendant prosecuted in the federal court, whatever the circumstances. (citing cases). • • • But due process of law in order to be 'due' does require that a State give a defendant ample opportunity to meet an accusation. • • • Such need may exist whether an accused contests a charge against him or pleads guilty."
>
> *Foster* v. *People of Illinois,* 332 US. 134 at 136 67 S. Ct. 1716 at 1717.

What Winston Claims: See [illegible] 35-48

Petitioner Winston claims a denial of his basic rights rights, contrary to the Constitutions of Illinois and of the United States, by a course of conduct for fifteen years by the State's Attorney of Cook County, which continues by permission of the courts of Illinois, without any hearing on the facts, nor any day in court for your Petitioner. Also

the public records of Cook County show that after this suit was begun, the tax foreclosure suits and decrees that were conducted and approved, since then by the State's Attorney, have caused to be lost and written off, more than fifty million dollars of real estate taxes that were collectible by those suits which Winston had filed and was pursuing as pending litigation, when he was stopped by the State's Attorney by force of this suit.

Winston urges that such action by the State's Attorney, is an usurpation of legislative and governmental powers which are vested by the Constitution of Illinois, as established by his pleading and Petition, exclusively in the Board of County Commissioners of Cook County. That Board has not authorized nor approved this suit against Winston but has disapproved all action by the State's Attorney.

Winston insists that the State's Attorney of Cook County, unjustifiably has used the powers of his office, by personal discrimination that he began after legal services were rendered and completed by Winston as a member of the legal profession. That discrimination will deprive Petitioner of his vested civil rights. After the County Board approved the legal services and work of Winston, that was completed pursuant to legislation and authority granted to Winston by the Board of County Commissioners of Cook County, this arbitrary discrimination was begun by the new State's Attorney for Cook County (Tr. 12, 19 and 26).

The Answer by State's Attorney is Evasive.

The State's Attorney also cites these cases at page 10: *Bradwell* v. *The State of Illinois*, 16 Wall 130; where Mrs. Bradwell was denied a license to practice law because she was a woman.

Ayres v. *Hadaway*, 303 Mich. 589; which was a disbarment proceeding.

In re Thatcher, 190 Fed. 969; which denied a writ of prohibition that was sought in the federal courts to enjoin a disbarment proceeding and orders by the state courts.

Emmons v. *Smitt*, 58 FS 869—149 F2d 969; which dismissed suit for writ of prohibition and summary judgment in the federal courts, which sought to enjoin and prevent a disbarment proceeding.

None of these cases involved any *ex post facto* and retroactive rulings upon pleadings about fees earned and vested as a property right; which is the fact of record in the case at bar. By his answer the States Attorney has established unwillingness to discuss our petition.

An example is the treatment of the question of Petitioner's right to be paid for services rendered in his professional work. Respondent assumes a question of the right to practice law instead of answering Petitioner's claim that having rendered services in his profession he cannot be deprived of his right to compensation.

The nonchalant manner in which Respondent attempts to ignore Petitioner's point indicates the attitude which has prevailed throughout the conduct of State's Attorney.

It is noteworthy that at the bottom of Page 2 of Respondent's brief, a separate paragraph has been inserted that Respondents mention only broad general propositions.

The State's Attorney blithely ignores citations made and discussed by Winston at pages 23 and 50 of petition for certiorari. It is sufficient to quote from one decision made by Supreme Court of Illinois.

Compensation Earned by Winston is Property.

"The right to follow the professions is one of the fundamental rights of citizenship. A person's business, profession or occupation, is property within the meaning of the constitutional provision as to due process of law, and is also included in the right to liberty and the pursuit of happiness. *People* v. *Love,* 298 Ill. 304."

Lasdon v. *Hallihan,* 377 Ill. 187 at 195 (pages 23 and 50 of Petition).

The merely bald statements by State's Attorney at page 5 of Answer, that the constitutional questions raised by petitioner are not substantial, is only statement, which he does not support. The Answer is indirect and evasive. It refuses to discuss the detailed analysis, which Winston has made by his petition, and now asserts anew. That failure by State's Attorney is admission that the petition is true. Compare the Winston record tr. 35-48.

The State's Attorney made a motion in this case before the Supreme Court of Illinois, to dismiss the appeal, for the reason that:

"The appeal of said Edward M. Winston is frivolous and without merit." That motion was overruled and denied by the Supreme Court of Illinois.

If such a motion had been made before this court, a sufficient answer would be what Your Honors said in denying a like motion made in the case of People of Illinois Ex Rel McCollum v Board of Education 333 U. S. 203: 68 SCt 461 at 463. Basic constitutional issues were presented for decision before the Supreme Court of Illinois, by your Petitioner and are preserved by the Record.

Conclusion Summary

Reference is made again to the record facts mentioned at page 3 and 48 of Petition. The State's Attorney continues to approve budgets to employ outside private attorneys to conduct county legal affairs. But if the Winston rulings stand, the State's Attorney can always refuse to pay anyone at his mere whim, after the legal services are completed.

Thereby the State's Attorney admits as true the statements made at page 22 of our Petition, that the State's Attorney seeks to have paramount and arbitrary power, without review by this Court.

Winston renews the prayers of his Petition and urges that your Writ be issued, that the record be reviewed, and that the decree and orders by Illinois Courts shall be reversed: and that he may have a day in court.

Respectfully submitted,

WEIGHTSTILL WOODS,
Attorney for Edward M. Winston.